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Devore for Horton v. Samuel

Court of Appeals of North Carolina - December 20, 2022 - S.E.2d - 2022 WL 17814512 - 2022-NCCOA-834

Guardian ad litem for elementary school student struck by car after exiting school bus brought negligence action on behalf of child against multiple defendants, including operator of afterschool childcare center to which student was heading when he was struck by car.

Operator then filed third-party complaint against bus driver and local school board that employed bus driver, alleging claims for contribution and indemnity. Board filed motion to dismiss on ground that third-party claims were barred by governmental immunity. After a hearing, the Superior Court denied the motion. Board appealed.

The Court of Appeals held that:

- As matter of first impression, limited waiver of governmental immunity for school bus negligence claims against local school boards applies only to claims brought in Industrial Commission and does not apply to third-party claims asserted in court, and
- Board's excess liability insurance coverage did not waive board's governmental immunity for school bus negligence claims.

Governmental immunity that applies to counties and other municipalities applies to a local school board because it is a governmental agency, and is therefore not liable in a tort or negligence action except to the extent that it has waived its governmental immunity pursuant to statutory authority.

Limited waiver of governmental immunity for school bus negligence claims against local school boards applies only to claims brought in Industrial Commission and does not apply broadly to third-party claims asserted in court; although State may be joined in court proceedings as third-party defendant for contribution or indemnification, and Tort Claims Act provides that liability of local school boards in school bus negligence cases shall be same as tort claims against State Board of Education, statute merely explains that local school board's liability, together with other aspects of case, shall be same as provided with respect to tort claims against State Board of Education and does not unambiguously provide that boards are considered state agency or include express statutory authorization to pursue claim outside Industrial Commission.

Local school board's excess liability insurance coverage did not waive board's governmental immunity for school bus negligence claims, under statute allowing local boards of education to waive governmental immunity from tort actions in superior courts by purchasing liability insurance; policy stated that it was not "intended by the Insured to waive its governmental immunity" and that policy provided coverage "only for occurrences or wrongful acts for which the defense of governmental immunity is clearly not applicable or for which, after the defenses are asserted, a court of competent jurisdiction determines the defense of governmental immunity not to be applicable."

